



Charles L.A. Terreni
Chief Clerk/Administrator
Phone: (803) 896-5133
Fax: (803) 896-5246

The Public Service Commission State of South Carolina

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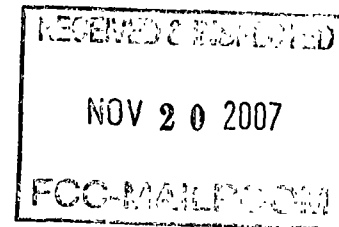
Phone: (803) 896-5100

Fax: (803) 896-5246

November 14, 2007

DOCKET FILE COPY ORIGINAL

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445- 12th Street, SW
Washington, DC 20554



Karen Majcher
Vice President, High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036

Re: Orders and Certification of Support for Rural and/or Non-Rural Carriers and
Competitive Eligible Telecommunications Carriers Pursuant to 47 C.F. R. Sections
54.313-314 – CC Docket No. 96-45
South Carolina Public Service Commission's Designation as Eligible
Telecommunications Carriers (ETC) of:
SCPSC Docket No. 2007-32-C – Midwestern Telecommunications, Inc.
SCPSC Docket No. 2007-193-C – FTC Communications, Inc. d/b/a FTC Wireless
SCPSC Docket No. 2003-227-C – Hargray Wireless, LLC

On October 30, 2007, the Public Service Commission of South Carolina granted Eligible Telecommunications Carrier designation to the above listed carriers for the State of South Carolina. The orders granting the designations to the listed carriers are enclosed. (Midwestern Telecommunications, Inc. – Order No. 2007-763, dated November 13, 2007; FTC Communications, Inc. d/b/a FTC Wireless – Order No. 2007-805, dated November 13, 2007; and Hargray Wireless, LLC – Order No. 2007-804, dated November 14, 2007.)

The Commission hereby certifies that all federal high cost support provided to rural and/or non-rural carriers and competitive ETCs in this state will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(3) of the Communications Act of 1934, as amended, and applies from the effective date of the above Orders through the end of calendar year 2008. This action is consistent with the directives of Federal Communications Commission CC Docket No. 96-45.

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Marlene H. Dortch, FCC
Karen Majcher, USAC
November 14, 2007
Page 2

As advised in our letter of November 7, 2007, Midwestern Telecommunications, Inc. is designated only in the non-rural/non-high cost model territory of BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina. Midwestern is therefore only entitled to Low Income Support. Further, Hargray Wireless will be forwarding a petition seeking redefinition of the study area of United Telephone Company of the Carolinas d/b/a Embarq. The SCPSC has approved this redefinition.

Sincerely,

A handwritten signature in black ink, appearing to read "G. O'Neal Hamilton". The signature is fluid and cursive, with the first name "G." being small and the last name "Hamilton" being larger and more prominent.

G. O'Neal Hamilton
Chairman

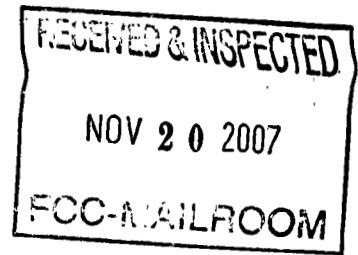
GOH/hha
Enclosures

cc w/o enclosures: All parties of record
SCPSC Docket Nos. 2003-227-C, 2007-32-C & 2007-193-C

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2007-32-C – ORDER NO. 2007-763

NOVEMBER 13, 2007



IN RE: Application of Midwestern Telecommunications, Inc. for Designation as an Eligible Telecommunications Carrier for the Purposes of Receiving Federal Universal Service Support Pursuant to Section 214 (e) (2) of the Telecommunications Act of 1996) ORDER GRANTING) DESIGNATION AS) AN ELIGIBLE) TELECOMMUNICATIONS) CARRIER)
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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Midwestern Telecommunications, Inc. ("MTI" or the "Company") for designation as an Eligible Telecommunications Carrier ("ETC") in certain areas of the State of South Carolina under the provisions of 47 U.S.C. § 214(e)(2) of the Federal Telecommunications Act (the "Federal Act") and 47 C.F.R. §§ 54.401-54.417 (the "FCC's Rules"). MTI filed its Application on January 19, 2007. MTI seeks ETC status in order to offer Lifeline and Link-Up support to its qualifying customers, and draw from the federal Universal Service Fund ("USF") in connection with those services.

By letter, the Commission instructed MTI to publish, one time, prepared Notices of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notices of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Company complied with this instruction and provided the Commission with proof of publication of the Notices of Filing. A

Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on May 24, 2007. The South Carolina Office of Regulatory Staff ("ORS") was a party pursuant to statute.

The public hearing was held on July 31, 2007 at 10:30 a.m. in the Commission's Hearing Room, with the Honorable G. O'Neal Hamilton, Chairman, presiding. At the hearing, John J. Pringle, Jr., Esquire represented MTI. John Bowen, Esquire, and Margaret Fox, Esquire, represented the SCTC. C. Lessie Hammonds, Esquire, represented the ORS. MTI presented the Direct and Responsive Testimony of Ikechuku Chinwah. The ORS presented the Direct and Responsive testimony of James McDaniel.

BACKGROUND

MTI is a competitive local exchange carrier ("CLEC") headquartered in Chicago Heights, Illinois and was authorized to provide local exchange services in South Carolina on March 12, 2003 via Order No. 2003-124 issued in Docket No. 2002-381-C. MTI is currently certified to provide local exchange services in 13 states.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company ("USAC"): 1) financial support to carriers serving high-cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connections to eligible schools and libraries; 3) assistance to low income customers (discounted installation and monthly telephone services); and 4) discounted services to rural health care providers.

MTI has made clear that it is not planning to seek high-cost universal service funding if it is designated as an ETC in South Carolina. Accordingly, MTI limits its requested USF support

to the federal USF low income support program, and certifies that all low income USF funding it receives will be used to subsidize rates for its Lifeline and Link-Up customers, consistent with 47 C.F.R. § 54.403.

MTI is currently designated as a low income support ETC in Alabama, Florida, Illinois, and Wisconsin, and is currently providing Lifeline/Link-Up services to over 3,000 customers in those states. MTI's ETC status is in good standing in the states where MTI has been so designated. MTI's witness further testified that its accounts with the Federal Communications Commission (FCC) and USAC are current. MTI is not aware of any outstanding complaints or violations with the FCC.

At the beginning of the hearing, MTI and the ORS submitted a Stipulation setting out a number of terms under which MTI agreed to operate should the Commission grant its ETC Application. The Stipulation between MTI and the ORS is attached hereto as Exhibit A and incorporated herein by reference.

As set out in the Stipulation, MTI has further agreed, in conformance with the South Carolina Lifeline program, to provide qualified customers with a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges; \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50% match of federal support for having a state lifeline program requiring a \$3.50 credit under the South Carolina eligibility criteria.

ANALYSIS

A. Federal Statutory Requirements

In Section 214(e)(2) of the Federal Act, Congress authorized state commissions to designate a common carrier as an ETC if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) provides:

(1) Eligible Telecommunications Carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2) , (3) , or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received —

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

A telecommunications carrier may be designated as an ETC , and receive universal service support, so long as it offers, within a service area, the services that are supported by federal universal service support mechanisms under Section 254 (c) of the Act, and so long as it adequately advertises the availability of, and the charges for, such services. The Commission notes that MTI bears the burden of proving it has met each of the necessary elements required for ETC designation.

1. Service Area

Section 54.207 of the FCC's rules defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by a non-rural incumbent local exchange company ("ILEC"), there are no restrictions on how a Commission identifies a "service area" for purposes of designating a competitive ETC.

MTI proposes a service area consisting of each of the AT&T South Carolina wire centers in the Greenville and Charleston areas of South Carolina, as designated in Exhibit B hereto. No party opposes MTI's service area designation. MTI seeks designation solely for certain wire centers in AT&T's service territory. The Commission finds that MTI has met the service area requirement.

2. Required Service Offerings

The services to be supported by the USF under Section 254(a) are principally enumerated in Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), as follows:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi -frequency signaling or its functional equivalent;
- (d) Single -party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

As set out in its Application and Testimony, MTI will offer all of the services enumerated above using facilities obtained from AT&T South Carolina by means of a commercial agreement. Accordingly, MTI satisfies the requirement set out in Section 214(e)(1)(B).

Additionally, FCC rules obligate an ETC to provide the low income support programs known as Lifeline and Link-Up and advertise the availability of those services in a manner reasonably designed to reach those likely to qualify for them. 47 C.F.R. §§ 54.405 and 54.411. No party provided evidence or argument in opposition to MTI's evidence regarding the foregoing supported services. Accordingly, the Commission finds that MTI offers and has the capability to provide each of the nine supported services in the areas for which it seeks ETC status.

3. Required Advertising

In addition to the service offerings required by Section 214(e)(1)(B) of the Federal Act, FCC rules (CFR Parts 54.405 and 54.411) provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service." Lifeline and Link-Up are the programs MTI intends to support with ETC funding. MTI provided evidence showing that it will advertise the availability and terms of its services throughout its designated area (Chinwah Direct Testimony at Page 3, ll. 4-6; Exhibit A). Thus, MTI has shown that it will "advertise the availability of such services and the charges therefor using media of general distribution." No party challenged MTI's evidence. Therefore, the Commission concludes that MTI has demonstrated that it will publicize the availability of Lifeline and Link-up in a manner reasonably designed to reach those likely to qualify for the service, as directed by CFR §54.405 and 54.411.

B. The FCC's ETC Order

On March 17, 2005, the FCC issued its ETC Order, to clarify existing requirements and impose additional federal requirements that the FCC will use in evaluating future federal applications for ETC designation. The FCC described its additional guidelines, codified at 47 CFR §54.202, as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that state commissions apply these guidelines in their evaluation of ETC applications properly before such commissions. However, the FCC did not obligate state commissions to employ the additional guidelines. ETC Order at paragraphs 58-64.

Generally speaking, the additional FCC guidelines require that an ETC applicant demonstrate: (1) a commitment and ability to provide services, including service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the ILEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Federal Act. Further, the FCC augmented its existing annual certification and reporting requirements, to further the FCC's goal of ensuring that ETCs provide supported services throughout their service territories. Moreover, the FCC expanded its view of the public interest requirement for additional ETCs.

Although the additional requirements in the ETC Order are not binding on the Commission, we will consider them in this proceeding.

1. Specific Additional FCC Performance Requirements

First, pursuant to the ETC Order, an ETC applicant shall commit to providing service

throughout its proposed designated service area to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(A).

MTI commits to providing service throughout its proposed ETC-designated service area to all customers. (Chinwah Direct Testimony at Pages 4-5). No party questions that commitment. Consequently, the Commission concludes that MTI supplied sufficient evidence demonstrating its present ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service.

The FCC also expects an applicant to demonstrate its ability to furnish services to all customers in the foreseeable future. Thus, an ETC applicant shall submit to the FCC a five-year plan describing, with specificity, proposed improvements or upgrades to the applicant's network on a wire-center -by-wire -center basis throughout its proposed designated service area. Because MTI seeks ETC designation solely for reimbursement of subsidized Lifeline and LinkUp services to eligible customers, the Commission agrees with MTI and the ORS and finds that submission of a Five -Year Network Improvement Plan is not required at this time. However, should MTI seek to receive high cost support, it shall abide by the multiyear network improvement plan requirement.

Second, the ETC Order obliges an applicant to demonstrate its ability to remain functional in emergency situations. MTI has provided testimony that it has the ability to do so. Because MTI leases facilities from AT&T to serve its customers, it has the same ability to remain functional in emergency situations as AT&T. No party disagrees. The Commission finds that MTI has met its burden on this issue.

Third, An ETC Applicant shall demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 CFR §54.202(a)(3). MTI provided evidence that it

will satisfy applicable consumer protection and service quality standards. (Chinwah Direct Testimony at Page 3, ll. 10-12). As part of its certification requirements for local exchange and interexchange services, MTI must abide by the service quality and consumer protection rules set forth in the Commission's regulations and applicable orders. No party questions MTI's evidence or commitments concerning the applicable standards. Consequently, the Commission concludes that MTI has demonstrated that it will satisfy appropriate consumer protection and service quality standards. This finding is conditioned on MTI's continuing compliance with the commitments it made in its certification docket and in this proceeding.

Fourth, an ETC Applicant shall demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. MTI offers several residential service packages that are comparable to certain AT&T calling plans. MTI emphasizes, with respect to comparability, that its local calling packages are offered to all who apply, regardless of past credit history, which leads to a very large churn and default rate. Consequently, its cost of doing business may be higher than an ILEC's. Therefore, the Commission finds that MTI's local usage and rate plans meet the comparable local usage and rate plan requirement.

Fifth, an ETC Applicant shall certify its acknowledgement that the FCC may require it to provide equal access to long distance carriers if no other ETC is doing so within the service area. ETC Order at Paragraph 35; 47 CFR §54.202(a)(5). The Commission finds that MTI meets the equal access requirement.

2. Additional FCC Certification and Reporting Requirements

In Paragraph 69 of its ETC Order, the FCC identified the following additional annual reporting and certification requirements for ETCs (some of which simply require annual certification of existing ETC performance requirements):

a) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

b) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: 1) the date and time of onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected; 4) the geographic areas affected by the outage; 5) steps taken to prevent a similar situation in the future; and 6) the number of customers affected;

c) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

d) the number of complaints per 1,000 handsets or lines;

e) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

f) certification that the ETC is able to function in emergency situations;

g) the amount of USF funding received by MTI during the reporting period;

h) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

i) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

The FCC encouraged state commissions to adopt the foregoing reporting requirements and to apply them to all ETCs, not merely competitive ETCs. ETC Order, Paragraph 71. We will follow the FCC's recommendation, and we find that MTI has committed to complying with all of the applicable annual reporting requirements imposed on a recipient of low cost support. See Chinwah Testimony; Exhibit A. The Commission concludes that MTI must file reports with the ORS as set out in the parties' Stipulation.

3. The Public Interest Requirement

Section 214(e)(2) of the Federal Act requires a finding that additional ETC designations be in the public interest. In the instant case, MTI has demonstrated that its application for ETC designation is in the public interest, within the meaning of the ETC Order. MTI asserts that it is in a unique position to serve the public interest when providing USF assistance, because it is the carrier of last resort for many of its customers. Approximately 85% of MTI's customers have been disconnected by the incumbent carrier for lack of payment. Of those disconnected customers, many qualify for USF assistance. MTI states that end-users who have been disconnected by the incumbent often have nowhere else to go for phone service, and argues that these are the very people that the USF was meant to assist. No party contends that MTI does not meet the public interest test.

In the Commission's view, the designation of MTI as an ETC will increase customer choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested. Customers who can obtain this telecommunications service will likely benefit from additional rate plan options and increased access to emergency services.

The Commission notes that MTI's specific voluntary commitment to comply with the guidelines in the ETC order – and specifically with the ORS' tailoring of those guidelines to fit both the Commission's existing rules and Orders and the particular circumstances of MTI's Application – is a critical component supporting a positive public interest finding. Thus, subject to the commitments and conditions discussed in this Order, the Commission concludes that MTI has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

C. Other Considerations

The Office of Regulatory Staff has requested that Midwestern be required to submit to annual recertification and to reapply to the Commission should it wish to expand the scope of its ETC designation. With regard to annual recertification, we hold that the annual recertification required by the FCC and the Universal Service Administrative Company (USAC) is adequate and that the Company should not be required to apply for additional recertification to this Commission on an annual basis. However, since Midwestern seeks to be designated only in non-rural exchanges of AT&T-South Carolina, expansion to rural high cost areas would require additional designation proceedings before this Commission.

IT IS THEREFORE ORDERED THAT:

1. MTI is designated as an ETC, as of the effective date of this order, in the requested areas served by AT&T-South Carolina.
2. MTI shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.

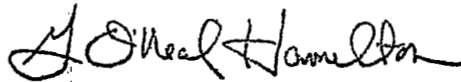
3. All federal USF funding received as a result of this Order will be used for Lifeline and Link-Up support for low income customers.

4. Should the Commission determine that MTI has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules or regulations, the Commission may deny MTI's annual recertification as an ETC.

5. The MTI-ORS Stipulation is approved.

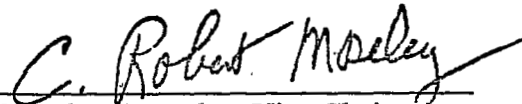
6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)

TERMS OF STIPULATION BY MIDWESTERN TELECOMMUNICATIONS, INC.

RE: 2007-32-C

Midwestern is a certificated CLEC that offers local exchange service and meets the facilities requirements identified in 47 CFR 54.201(f) for universal service funding by leasing the physical components of the telecommunications network necessary to provide the nine services identified in 47 CFR 54.201(d)(1) through its Commercial Facilities Agreement with BellSouth. In addition, Midwestern agrees to advertise the availability of supported services using media of general distribution.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company ("USAC"): 1) financial support to carriers serving high cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connection) to eligible schools and libraries; 3) assistance to low income consumers (discounted installation and monthly telephone services); and 4) discounted service to rural health care providers.

Midwestern has requested ETC designation in the non-rural BellSouth service area. Additionally, Midwestern has limited its requested USF support to the federal USF low income support program. Midwestern certifies that all low income USF funding it receives will be used to subsidize rates for its Lifeline and Link-up customers, consistent with 47 CFR 54.403.

Midwestern agrees to include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied. Midwestern also agrees to report quarterly the percentage of consumers offered Lifeline via resale versus commercial agreements.

Midwestern agrees to utilize the same qualifying criteria for Lifeline and Link-up as is offered in the BellSouth territory (eligibility for TANF, Food Stamps, Medicaid and/or at or below 125% of poverty.)

Midwestern agrees to provide Lifeline customers an additional \$3.50 credit in order that the federal matching monies can be maximized. This will yield a Lifeline credit of \$13.50 per month which is consistent with the credit offered throughout BellSouth service area.

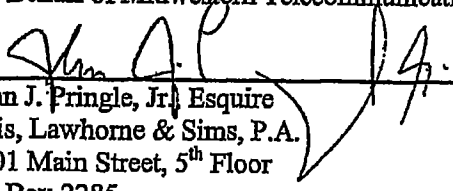
Midwestern agrees that it will abide by all advertising and reporting and verification requirements established by the FCC and Commission.

Should Midwestern seek designation as an ETC for high cost support, Midwestern will file an additional and separate application with the Commission that addresses all applicable state and federal laws, rules and regulations, including, but not limited to, an appropriate build-out plan that includes the use of its own facilities in addition to those obtained through commercial agreements.

Midwestern shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying and enrolling eligible participants in the Lifeline and Link Up programs.

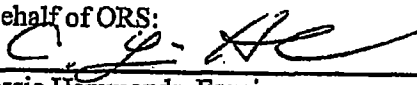
Midwestern shall comply will all applicable state and federal laws, rules, and regulations regarding ETC designation and reporting requirements.

On Behalf of Midwestern Telecommunications, Inc.:



John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
PO Box 2285
Columbia, South Carolina 29202

On Behalf of ORS:



C. Lessie Hammonds, Esquire
Counsel for ORS
1441 Main Street, Suite 300
Columbia, South Carolina 29201

Dated: July 30, 2007

Wire Centers in Greenville and Charleston, S.C. in which Midwestern Telecom, Inc. Seeks ETC Designation

SC Wire Center (8-digit CLLI)	SC Deaveraged UNE Zone (1/2 for 3)	SC Wire Center	SC State
CHTNSCDP		1 Chtn Deer Park	SC
CHTNSCDT		1 Chtn Dial & Tol	SC
CHTNSCJM		1 Chtn James Isla	SC
CHTNSCJN		1 Chtn Johns Isla	SC
CHTNSCLB		1 Chtn Lambs	SC
CHTNSCNO		1 Chtn North	SC
CHTNSCPS		1	
CHTNSCWA		1 Chtn West Ashle	SC
GNVLSCEB		1 Gnl Berea	SC
GNVMSCBU		1	
GNVLSCHH		1 Gnl Churchill	SC
GNVLSCCR		1 Gnl Crestwood	SC
GNVLSCHC		1	
GNVLSCHP		1 Gnl Ware Place	SC
GNVLSCHW		1 Gnl West	SC
GNVLSCHR		1 Gnl Woodruff R	SC
GNVLSCHT		1 Greenville D&T	SC

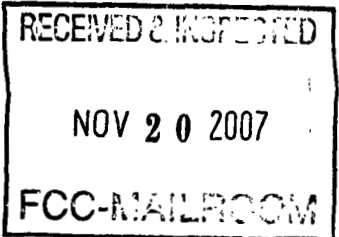
BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2007-193-C – ORDER NO. 2007-805

NOVEMBER 13, 2007



IN RE: Application of FTC Communications, Inc.)	ORDER DESIGNATING
d/b/a FTC Wireless for Designation as an)	FTC COMMUNICATIONS,
Eligible Telecommunications Carrier (ETC))	INC. D/B/A FTC WIRELESS
Pursuant to Section 214(e)(2) of the)	AS AN ELIGIBLE
Communications Act of 1934)	TELECOMMUNICATIONS
)	CARRIER

I. PROCEDURAL BACKGROUND

This matter comes before the South Carolina Public Service Commission ("Commission") upon the petition of FTC Communications, Inc. d/b/a FTC Wireless ("FTC Wireless") for designation as an Eligible Telecommunications Carrier ("ETC"), pursuant to 47 U.S.C. § 214(e)(2), for the purpose of receiving federal universal service funding. FTC Wireless filed its Application (the "Petition") on May 9, 2007.

A public hearing was held in this matter on July 25, 2007. FTC Wireless was represented by William E. DuRant, Jr., Esquire, and Stephen G. Kraskin, Esquire. FTC Wireless presented the direct testimony of N. Douglas Horne and Ronald K. Nesmith. FTC Wireless also presented the responsive testimony of Ronald K. Nesmith.

The South Carolina Telephone Coalition ("SCTC") was represented by M. John Bowen, Jr., Esquire, and Sue-Ann Gerald Shannon, Esquire. The SCTC presented the direct and reply testimony of Glenn H. Brown.

The Office of Regulatory Staff ("ORS") was represented by C. Lessie Hammonds, Esquire and Shealy Reibold, Esquire. ORS did not present a witness.

II. INTRODUCTION AND BACKGROUND

This docket was established to consider FTC Wireless's petition to be designated as an ETC throughout the area of South Carolina served by the Farmers Telephone Cooperative. Section 254(e) of the federal Telecommunications Act of 1996 ("Act") provides that only an ETC as designated under Section 214(e) of the Act may receive federal universal service support.

The goal of universal service is to ensure that "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 151, § 254. Any consideration of a petition to designate an ETC for purposes of receiving federal funds intended to preserve and advance universal service should be undertaken in a manner consistent with these overall goals.

Pursuant to Section 214(e)(2) of the Act, this Commission has jurisdiction to designate a common carrier as an ETC for a service area designated by the Commission if the carrier meets the requirements set forth in Section 214(e)(1) of the Act. Section 214(e)(1) of the Act requires that a telecommunications carrier seeking designation as an ETC must offer the services that are supported by federal universal service support mechanisms, and must advertise the availability of those services and the charges therefore using media of general distribution. The Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases,

designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience and necessity, so long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(2).

The Federal Communications Commission ("FCC") has defined the services that are supported by Federal universal service support mechanisms to include the following nine (9) core services:

- 1) voice grade access to the public switched network;
- 2) access to free of charge "local usage" defined as an amount of minutes of use of exchange service;
- 3) dual tone multi-frequency signaling or its functional equivalent;
- 4) single-party service or its functional equivalent;
- 5) access to emergency services;
- 6) access to operator services;
- 7) access to interexchange service;
- 8) access to directory assistance; and
- 9) toll limitation services for qualifying low-income consumers.

47 C.F.R. § 54.101(a). These nine services must be offered throughout the service area for which the designation is received, and must be offered using either the ETC's own facilities or a combination of its own facilities and resale of another carrier's services. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d)(1). The requirement that a carrier "offer" the service does not mean that it must actually provide ubiquitous service prior to certification as an ETC and, in fact, the Commission cannot place such a condition on a carrier prior to certification. *See, e.g., Federal-State Joint Board on Universal Service, RCC Holdings, Inc., Petition for Designation as an*

Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, Memorandum Opinion and Order, DA 02-3181 (Wireless Comp. Bureau, rel. Nov. 27, 2002).

The FCC has adopted additional requirements that must be met by carriers seeking ETC designation from the FCC. See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (rel. March 17, 2005) ("FCC ETC Order"). According to the FCC's additional requirements, in order to be designated as an ETC, the carrier must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service; and

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area;

(2) Demonstrate its ability to remain functional in emergency situations;

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards;

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation; and

(5) Certify that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

47 C.F.R. § 54.202(a).

Specifically, with respect to the five-year plan, the FCC requires:

Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion dates for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated

population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

47 C.F.R. § 54.202(a)(1)(ii).

While The FCC's requirements are not binding on this Commission, we have stated that, in evaluating ETC applications such as FTC Wireless's during the interim period prior to issuance of the Commission's own ETC regulations, we will "consider the FCC's guidelines regarding designation of new ETCs in conjunction with the Commission's existing framework of analysis of ETC applications as reflected in prior Commission orders such as Order # 2005-5, dated January 7, 2005, in Docket # 2003-158-C. In other words, we should be informed by – but not controlled by – those FCC guidelines, and the public interest should be paramount in our considerations." See Directive issued by the Commission in Docket No. 2006-37-C, dated May 30, 2007 and Order No. 2007-424.

With respect to the public interest determination, Section 214(e)(2) of the Act sets forth the analysis a state commission must perform in designating ETCs as follows:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(Emphasis added.)

While the states are free to establish their own public interest tests, in instances where states have declined or failed to exercise their jurisdiction under Section 214(e)(2), the FCC has applied a public interest analysis pursuant to its authority under Section 214(e)(6). Initially the FCC's standard was very lenient, and the FCC granted applications for ETC status based solely on a generalized statement by the applicant that doing so would bring the benefits of competition to the designated area. See, e.g., Guam Cellular and Paging, Inc., DA 02-174 (rel. January 12, 2002). However, concerns about exponential growth in the size of the federal USF, as well as a specific concern that the FCC's policy was not consistent with the intended use of universal service funding in high cost areas, led to the evolution of a more stringent public interest analysis. See, In the Matter of Federal State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, FCC 03-338, CC Docket No. 96-45 (rel. January 22, 2004) ("Virginia Cellular"); In the Matter of Federal State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, FCC 04-37, CC Docket No. 96-45 (rel. April 12, 2004) ("Highland Cellular").

In these orders, the FCC clearly stated that the burden of proof was on the applicant to demonstrate that the public interest would be served by granting the application. Virginia Cellular at ¶ 26; Highland Cellular at ¶ 20. According to the FCC, the value of competition alone is not sufficient to satisfy the public interest test in rural areas. Virginia Cellular at ¶ 4; Highland Cellular

at ¶ 4. The determination of public interest instead requires a fact-specific balancing of the benefits and costs. Virginia Cellular at ¶ 28; Highland Cellular at ¶ 22. Factors that should be considered include: the benefits of increased competitive choice; the impact of multiple ETC designations on the universal service fund; whether the benefits of an additional ETC outweigh any potential harms; the unique advantages and disadvantages of the competitor's service offering; any commitments regarding quality of service; and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Virginia Cellular at ¶ 28; Highland Cellular at ¶ 22.

Even more recently, concerns with preserving universal service funding for its intended purposes in light of a burgeoning federal universal service fund led the Federal-State Joint Board on Universal Service ("Joint Board") to recommend that the FCC "take immediate action to rein in the explosive growth in high-cost universal service disbursements" by imposing an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive. Recommended Decision, In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service, WC Docket No. 05-337 and CC Docket No. 96-45, FCC 07J-1, rel. May 1, 2007 ("Recommended Decision"), at ¶ 1.

While growth in the size of the federal USF is a major concern, it is a federal issue that must be addressed at the federal level. We would note this statement from the FCC regarding the acquisition of Alltel Corporation by Atlantis Holdings, LLC: "Although the [FCC] has not yet adopted the Joint Board's recommendation, this transaction implicates the Joint Board's recommendation." See *FCC Memorandum Opinion and Order* in WT Docket No. 07-128 – *Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee For*